

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
THE STATE OF TEXAS, ET AL)
)
vs.) CASE NO. 4:20-CV-957-SDJ
)
GOOGLE LLC)

SPECIAL MASTER HEARING
MAY 2, 2024

SPECIAL MASTER HEARING, via Zoom, was taken in the
above-styled and numbered cause before Special Master
David Moran on the 2nd day of May, 2024, from 10:02 a.m.
to 11:58 a.m., before Melinda Barre, Certified Shorthand
Reporter in and for the State of Texas, reported by
computerized stenotype machine, all parties appearing
remotely via web videoconference, pursuant to the rules
of procedure and the provisions stated on the record or
attached hereto.

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(ALL APPEARED VIA ZOOM VIDEO CONFERENCE.)

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ALSO PRESENT: David Moran, Special Master
William Nilsson

1 SPECIAL MASTER: Let's begin our hearing
2 this morning, May 2nd. And let me call the case which
3 is the State of Texas, et al versus Google LLC in the
4 United States District Court for the Eastern District of
5 Texas, Sherman Division, Case No. 4:20-cv-957 before the
6 Honorable Sean Lee Jordan. Let me have appearances,
7 please, from the States.

8 MS. YOUNG: Geraldine Young for the State
9 of Texas. Go ahead.

10 MR. DeROSE: Zeke DeRose, Lanier Law Firm,
11 for the State of Texas.

12 SPECIAL MASTER: Anyone else from the
13 States?

14 MR. DeROSE: We also have Trevor Young
15 from the Texas Attorney General's Office.

16 SPECIAL MASTER: I see Mr. Young. Good
17 morning, Mr. Young. Thank you. Anyone else from the
18 States?

19 All right. From Google, Mr. McCallum
20 would you like to kick that off?

21 MR. McCALLUM: Happy to, Special Master.
22 Robert MacCallum from Freshfields on behalf of defendant
23 Google. And with me here today I have my colleague from
24 Freshfields Lauren Vaca and also from our co-counsel at
25 the Yetter Coleman firm we have Jamie Aycock and Mollie

1 Bracewell.

2 SPECIAL MASTER: Thank you. Anyone else
3 from Google? All right. Thank you both sides there.

4 Obviously we've seen the two orders late
5 yesterday from His Honor, Judge Jordan, on the States'
6 request for some modification of the scheduling order.
7 And you saw his thinking and rationale and what he had
8 to say with respect to that and then, secondly, the
9 impact on dates.

10 As I said in my e-mail to the parties
11 yesterday early evening, there's a little bit of
12 breathing room here; but there's still a lot of work to
13 be done. So the good news is the work's steady, but the
14 bad news is the work has been really steady for you.

15 I'll take judicial notice of e-mails in
16 the middle of the night from Mr. DeRose, who apparently
17 doesn't sleep, and we've already taken judicial notice
18 that Mr. McCallum works 24 hours a day regardless of
19 what time zone he may be in, Down Under, London,
20 New York, everywhere.

21 So I do want to commend the parties for
22 working really, really hard on a challenging case,
23 zealously representing your clients extremely well, as
24 well as being cooperative in a very challenging,
25 difficult case.

1 received yesterday was in connection with the
2 re-contracting dashboard that you had been made aware of
3 as a result of Ms. [REDACTED]'s deposition. So that's what
4 we provided yesterday.

5 There will be an additional letter coming
6 from me, I think, pointing you to other additional data
7 sources. If not later today, then by tomorrow. And
8 that comes on the back of, as you know, a number of
9 written responses that we've provided in connection with
10 Ms. [REDACTED]'s testimony.

11 MS. YOUNG: Okay. That's great. Maybe
12 we'll pencil in a meet-and-confer on Monday. Okay.
13 Thank you.

14 SPECIAL MASTER: Thank you both sides on
15 that. Let's turn to Google's disputes that Mr. Aycock
16 wants to be heard on this, I suspect. The floor is
17 yours.

18 MR. AYCOCK: Thank you, Special Master.
19 So we would like to raise a couple of issues with the
20 corporate representative of Texas' deposition. First
21 let me just set the stage so that you understand kind of
22 the context here.

23 So [REDACTED] was designated not
24 just as the corporate representative for the State of
25 Texas, but he was also designated by all of the 17

1 plaintiff states here for all of the common factual
2 issues in the case. So this is not just another one of
3 the state depositions. It's particularly significant to
4 the case.

5 So this was our opportunity really to dig
6 into the factual basis for the allegations in the
7 complaint and get more details on interrogatory
8 responses.

9 This may not have come across in the -- in
10 just the briefing that was submitted to the Special
11 Master; but, you know, if you actually sat in the
12 deposition, what you would have seen is you would have
13 seen that the deposition went on for a long time. Part
14 of the reason it went on for such a long time was
15 because [REDACTED] spent such a significant amount of
16 time flipping pages of the complaint and interrogatory
17 responses and simply reading from the complaint and
18 interrogatory responses. And that was the vast majority
19 of the day that we spent.

20 So after --

21 SPECIAL MASTER: Yeah. It was a long
22 deposition. I've got all of it.

23 MR. AYCOCK: After the deposition we sent
24 an e-mail to counsel sort of outlining the deficiencies.
25 We never received a response to that.

1 SPECIAL MASTER: Right.

2 MR. AYCOCK: What I will say is that is in
3 direct contrast to the way that Google has responded
4 when deficiencies have been noted. We were just talking
5 about the deposition of Mr. [REDACTED], and Mr. McCallum was
6 referring to the ways that Google has responded with
7 certain information in arriving and making additional
8 productions. And we haven't seen any of that from the
9 States.

10 So the two issues that we wanted to
11 present to the Special Master then are -- first have to
12 do with their lack of preparation and lack of
13 responsiveness in particular areas.

14 Then the second issue, which has been
15 presented to the Special Master previously, you know --
16 you have seen this before -- has to do with facts that
17 were learned during the third-party interviews that were
18 conducted.

19 So first with regard to the preparation,
20 let me just point to a couple of examples here. In
21 raising this we are not in a situation where we are
22 trying to do a gotcha with the witness where we
23 presented some random documents and are trying to quiz
24 the witness. We are really trying to get at some of the
25 basic contentions in the case and some of the basic

1 factual support for the claims.

2 So the first point is that in the
3 complaint there are a number of paragraphs where
4 allegations are made about harms to particular
5 advertisers and particular publishers. We actually in
6 our notice in a number of instances identified with
7 specificity the paragraphs that we wanted to question
8 the witness about.

9 In our amended notice actually that we
10 just discussed that was narrowed the plaintiffs actually
11 proposed dropping some of those topics because they were
12 subsumed within our topic about the factual basis for
13 the complaint. So those don't appear in our narrowed
14 list of topics, but we were very specific.

15 In the deposition [REDACTED] with one
16 exception could not identify any of those specific
17 advertisers or publishers that are alleged to have been
18 harmed. The one exception was there was a very specific
19 narrow interrogatory that asked about a particular
20 publisher in a particular paragraph, and so he was able
21 to identify that specific publisher. But in no other
22 instance was he able to identify any of the specific
23 advertisers or publishers.

24 What we confirmed in the deposition is
25 that he also didn't do anything to investigate that

1 information. He didn't talk to anybody in advance about
2 those issues even though those were specific documents
3 that we had identified.

4 After the deposition we actually in our
5 e-mail to counsel said that for this issue we would be
6 happy to take written responses. We're just looking for
7 the information. Again, we never heard from the
8 plaintiffs on this topic, which I think is especially
9 not burdensome to the plaintiffs given that they should
10 know who the specific advertisers and publishers that
11 they've made allegations about in the complaint are.

12 The second issue that is an example that I
13 want to point to has to do with harm. We asked
14 questions about what is the alleged irreparable harm in
15 this case, and all that [REDACTED] did was he found an
16 interrogatory response that asked about harm. He read
17 it. Nothing in the interrogatory response says anything
18 about irreparable harm, and he couldn't identify with
19 any -- not even specificity. He could not even say what
20 the irreparable harm was in any way.

21 And I apologize for the raining sound in
22 the background. We're having a big storm right now in
23 Houston.

24 SPECIAL MASTER: It rains in Dallas, too.
25 It did all night long.

1 MR. AYCOCK: The third example I wanted to
2 point the Special Master to has to do with consumer
3 complaints. And [REDACTED] couldn't testify in any way
4 about any consumer complaints that were filed with the
5 State. He hadn't reviewed any of them. This was the
6 subject of several of our corporate representative
7 deposition topics in the notice.

8 He had spoken with one person about one
9 specific complaint and didn't remember any of the
10 details about that complaint. So he just was not
11 prepared. Those are just some of the examples that I'll
12 point the Special Master to.

13 SPECIAL MASTER: Okay.

14 MR. AYCOCK: In the response brief the
15 plaintiffs have said that we spent a lot of the
16 deposition trying to suggest that the witness was not
17 prepared. That's not at all the case. There are a
18 number of questions that asked what [REDACTED] did to
19 prepare on particular topics, but that's only after he
20 could not identify any specific factual basis for
21 numerous allegations.

22 And so we asked follow-up questions about
23 what he had done, whether he had looked at documents.
24 And what we see from the transcript over and over again
25 is essentially what he did is he read the complaint and

1 he read the interrogatory responses.

2 SPECIAL MASTER: Okay. Did you want to
3 talk about the work product issue that I know the States
4 have raised? And you've seen my order on that. So
5 let's talk about that, please.

6 MR. AYCOCK: That's right. The second
7 issue then has to do with the facts learned in the
8 interviews. So this is an issue that we've raised with
9 the Special Master before the deposition. We were aware
10 that there was a dispute between the parties on this
11 issue.

12 We thought that we had reached a
13 resolution and, actually, Mr. Yetter raised this in the
14 conference with the Special Master and on the record
15 specifically said what the agreement was between the
16 parties. And he specifically noted that the parties
17 agreed that the facts that were learned in these
18 interviews could -- the witness could be deposed about
19 those facts. That's on the record. But the witness
20 here was not prepared, didn't know anything about the
21 substance of those facts in any way.

22 The plaintiffs said in their brief that
23 the witness answered questions on this issue. But if
24 you look at the -- I mean, just to give you a couple of
25 examples of the questions that were asked and the

1 answers that were given on this issue -- so I'm reading
2 from the transcript starting at page 194. These are the
3 pages that the plaintiffs pointed to in their brief.

4 "So today you can't identify a single
5 category of document that was requested from the third
6 parties as part of the Texas investigation?

7 "No, other than all of these documents
8 were provided to Google.

9 "Question: And you interviewed those
10 third parties in part related to the documents that they
11 provided, right?

12 "Answer: I do not know the content of
13 those interviews. What I know about those interviews
14 was provided to Google in our communications privilege
15 log that lays out the people we spoke to, the date, the
16 time, if there was a witness and the nature of those --
17 well, the nature of the privileged document, privilege
18 description that's in there, what's in that list."

19 And then the question, "And so you didn't
20 review any of the interview memoranda that are
21 referenced in the privilege log, right?

22 "Correct.

23 "And you didn't ask anybody about the
24 substance of those interview memoranda, right?

25 "Correct."

1 So the witness provided no information
2 whatsoever from the interviews. And what's especially
3 problematic about that is that both the Texas witness
4 and since that time several of the States who have been
5 deposed have all confirmed that they can't say whether
6 any facts were learned from those third-party interviews
7 that form the basis of the complaint. And they've also
8 said that they can't say whether they're going to rely
9 on facts learned in those interviews at trial.

10 So we think it's particularly problematic
11 that they are now -- that they are saying we can't get
12 at any of those facts. What we've heard from the
13 plaintiffs is that we actually need to somehow get those
14 facts from the third parties, that somehow that is less
15 burdensome.

16 It's just sort of a basic principle of
17 discovery that if you can get something from a party,
18 you should get it from a party first as opposed to a
19 third party. We've talked about the deposition limits,
20 and that's actually our next issue that we're going to
21 talk about.

22 SPECIAL MASTER: So --

23 MR. AYCOCK: (Crosstalk) -- go and depose
24 every witness that was interviewed as part of the
25 investigation. So we really need for the plaintiffs to

1 provide these facts.

2 SPECIAL MASTER: Okay. So I appreciate
3 that. Well, you know, I've ruled on that issue that --
4 the memos to the file from the interviews by the AG's
5 office when they interviewed whoever they interviewed
6 and however they reduced that to writing. Google sought
7 the production of those materials, and I've ruled on
8 that request as privileged.

9 I hear the States saying if you -- we
10 already have a ruling that the underlying document
11 itself is privileged. How could I then permit you to
12 ask from a testimonial standpoint testimonial evidence
13 for the exact same information? How could I dare do
14 that and try to walk out of this room and say I try to
15 rule consistently, right?

16 So help me out how you can get through a
17 deposition the same information that I've held you can't
18 get the other way in an interrogatory or some other
19 discovery device.

20 MR. AYCOCK: All of our questions just
21 have to do with the facts. What a third party told the
22 State of Texas, there's nothing privileged about that.
23 And so that's -- I don't think there's any question that
24 we've only asked for the underlying facts.

25 We're also now not asking necessarily for

1 interview memoranda to be produced. We would like to
2 talk to a witness who can say, When we interviewed News
3 Corp, this is what they said, or, They provided a
4 presentation about the following topic.

5 Those are the kinds of things that we
6 should be entitled to know, who complained about Google?
7 What were their complaints? We're not asking for their
8 mental impressions about who would make a good witness
9 or the strength of their case or any of those kinds of
10 things.

11 SPECIAL MASTER: Okay. All right. Thank
12 you.

13 Who's going to take that for the States?

14 MS. YOUNG: I can cover some initial
15 points, and then I welcome Mr. Young and Mr. DeRose and
16 Mr. Wilkerson to jump in as well.

17 SPECIAL MASTER: You're going to do a
18 sufficient job to cover the issue, but I'll let you have
19 one colleague, not -- you don't need three to back you
20 up. You don't need anyone.

21 MS. YOUNG: I was just acknowledging them.
22 I will cover everything. I will be quick, too.

23 So on Google's request for some
24 information in writing, we'll follow up on that; and I
25 think we can provide something quickly.

1 I think that goes to the fact of the
2 position the States have always taken is that a lot of
3 the information that Google seeks can be provided in rog
4 responses and things like that, and we will uncover to
5 kind of fill some of the gaps they've raised here in
6 writing.

7 I do want to note, I think Mr. Aycock
8 mentioned that they noticed a topic on having the
9 witness identify specific advertisers and publishers. I
10 pulled up the 30(b)(6) notice to Texas. I don't see
11 that. But that's something that we think is more
12 appropriately considered to be provided in writing. So
13 we will go back and take a look at that.

14 And I think that underscores also the fact
15 that the States have gone through incredible effort to
16 put all the facts that they're relying on in either
17 their very lengthy complaint or their interrogatory
18 responses and all of the other written discovery we've
19 provided Google. The States are not looking to hide any
20 facts.

21 One other point I wanted to touch up on on
22 lack of -- their allegations of lack of preparation.
23 I'm fresh off of a 30(b)(6) deposition I took of a
24 Google witness yesterday. She arrived with a huge -- it
25 was remote. So I wasn't in the room with her. She

1 arrived with a 14-document binder that was then -- the
2 contents of which were sent to me two minutes before the
3 deposition started. It had kind of a notes page, and
4 then it had 14 documents including some pretty lengthy
5 Excels.

6 That was fine. That happens in 30(b)(6)s,
7 right? She referenced the notes during the deposition.
8 She was designated on a number of topics. One of the
9 topics she was designated on was Google's competitive
10 intelligence tracking and tracking of competitors.

11 I asked her, Who are Google's competitors
12 as to the AdX product? She could name at most two or
13 three and said maybe there are others. Same with
14 respect to their Google Ad Manager product, right?

15 So, I mean, I think there's kind of this
16 issue that Google is expecting the States' witnesses to
17 come and just recite names and, in the instance of
18 irreparable harm, give legal conclusions that I think
19 that are out of bounds and do not reflect a lack of
20 preparation or inadequate testimony by [REDACTED].

21 But I think a good -- at this point in
22 time a good solution is for the States -- we are good
23 faith going to consider Google's request for information
24 and provide it in writing, just as Mr. McCallum and his
25 team have provided us information in writing. We don't

1 think making the States prepare another 30(b)(6) witness
2 to testify about this type of information that
3 analogously Google's 30(b)(6) witnesses have also not
4 been able to testify about is the solution here.

5 And then with respect to the work product
6 memos, I don't have that much more to say about it
7 because I think you hit the nail on the head. I don't
8 think you can consistently rule.

9 What they're asking for is essentially
10 another 30(b)(6) witness to go and review all of those
11 work product memos and try to parse what may be
12 nonprivileged factual information from mental
13 impressions, which we do not think can be done based on
14 our review of the memos.

15 SPECIAL MASTER: Back to the first issue,
16 so when will you provide in writing these, my word not
17 yours, supplemental or additional responsive materials
18 that Google has raised through Mr. Aycock?

19 MR. YOUNG: So Mr. Collier defended
20 [REDACTED] deposition, and I think he is currently in
21 the Meta depo. So I just want to double check with him.

22 I will represent that that was something
23 we were working on, and it may have gotten kind of
24 deferred just in the hustle and bustle. I will talk to
25 him; but I think we can endeavor to provide something by

1 next week, May 10th.

2 This is where I welcome my other team
3 members to jump in because I don't want to commit us to
4 something that can't be done.

5 SPECIAL MASTER: Well, I appreciate that.
6 Someone was going to speak. Go ahead.

7 I think we need to move sooner, quicker,
8 faster than that date in light of what remains. So I
9 would encourage no later than Wednesday of next week --

10 MS. YOUNG: May 8th?

11 SPECIAL MASTER: May 8th.

12 -- responsive information on this issue
13 that Google has raised. And I would encourage the
14 States to do that because I think it's important on that
15 issue.

16 All right. Anything else from the States
17 on that?

18 MS. YOUNG: No. Thank you. And even
19 without an order we will provide it by May 8th.

20 SPECIAL MASTER: All right. And it may
21 get reduced to writing in an order. We'll see. But
22 thank you, Ms. Young.

23 Mr. Aycock, anything in response?

24 MR. AYCOCK: I just want to add for the
25 Special Master that, you know, the States are taking a

1 diametrically opposed position than they did going into
2 the deposition.

3 Ms. Young and I had a meet-and-confer on
4 this specific issue, and she specifically said on our
5 call there would be no basis for them to claim privilege
6 over facts that were conveyed in those interviews. That
7 was confirmed then by Mr. Yetter.

8 So the idea now that somehow there is no
9 way for the States to then get at the underlying facts
10 that everybody agrees are not privileged, I find it --
11 it's hard to understand and it's hard to reconcile with
12 the statements that were made. So I just would, again,
13 urge the Special Master to reconsider that issue.

14 SPECIAL MASTER: No. I appreciate that.
15 And I know you've emphasized that facts are facts; and
16 your view is that those are discoverable under all
17 circumstances, I think is generally your position as I
18 read it and understand it to be.

19 On the other hand, I also read from our
20 friends at the States that when the AG interviewed third
21 parties and learned a lot of facts -- and maybe they
22 learned some opinions and maybe they learned some
23 impressions -- then they went back to their office and
24 they wrote a memo to the file: I met with witness, you
25 know, No. 1 and this is my -- this is what I learned

1 from talking to witness No. 1.

2 These are -- some things that are written
3 down may be factual and some things written down may be
4 the AG in my example's impressions of that witness and
5 what he learned and opinions about them.

6 Those I understand to be attorney, you
7 know, work product memoranda; and we've ruled on that.
8 So it's a clash between those two issues, it seems to
9 me; and we'll just have to see how that goes.

10 I understand your point about you, going
11 into the deposition, thought you were going to get a lot
12 of facts. And I suspect from reading the States'
13 position they were going to provide you facts; but they
14 reserved all of their privilege, including work product.
15 And their position is that the information -- most, if
16 not substantial portions of it is privileged. So that's
17 how I understand the lay of the land between the parties
18 here this morning.

19 Okay. Anything further on that important
20 but challenging issue?

21 MS. YOUNG: Not from the States.

22 SPECIAL MASTER: Okay. On Nos. 2 and 3,
23 counting of State depositions as well as 30(b)(6)
24 depositions, I love math; but do we really need to go
25 into math this morning on this or can we say -- if it's

1 a ripe issue, happy to deal with it. But I would think
2 that we're not yet imminently about to cross over 40
3 depositions from either side. But tell me I'm being too
4 optimistic about that, and we can take that up later if
5 need be.

6 The floor is yours, Mr. Aycock, on these
7 two topics.

8 MR. AYCOCK: We actually do think that
9 this issue is ripe and it has to do with -- and we think
10 that as it stands that the plaintiffs have exceeded 40
11 depositions in terms of the number that have either been
12 taken or noticed.

13 So that's why -- I think that we can
14 present this fairly quickly and simply.

15 SPECIAL MASTER: Okay.

16 MR. AYCOCK: Concern that they are going
17 to raise that we have gone over that number. So if we
18 could get clarification, I do think it would be helpful
19 because it can guide the parties in terms of do we need
20 to withdraw any notices of deposition as we schedule
21 depositions beyond the close of discovery.

22 So the first issue just has to do with how
23 you count depositions of third parties. We understand
24 that the way that the plaintiffs are somehow counting is
25 that they are saying take all of the hours of

1 depositions, divide them by seven and that's how you get
2 the number of depositions.

3 They're pointing to -- I believe that they
4 are basing that on the language in the scheduling order
5 that has to do with a particular party's deposition.
6 That language doesn't have to do with -- so let's say
7 you took a three-hour deposition of one party, a third
8 party, and a four-hour deposition of another third
9 party. We think that would be two depositions, not one
10 deposition.

11 I think that that's confirmed by other
12 language in the scheduling order. If you look at the
13 language on nonparties, in that provision the scheduling
14 order provides -- and I know we've talked about this --
15 that the parties can depose a witness for up to eleven
16 hours total, five and a half for each side. And the
17 scheduling order specifically says that that would count
18 as one deposition for each side.

19 I think that that makes clear that it's
20 not a matter of hours. We understand that the Eastern
21 District often does have scheduling orders that propose
22 a total number of hours of deposition. That's not what
23 our scheduling order provides.

24 So that's the first issue. I'll go ahead
25 and address the second if Special Master would